

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2827 of 1996

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? - No

2. To be referred to the Reporter or not? - No

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3. Whether Their Lordships wish to see the fair copy of the judgement? - No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? - No

5. Whether it is to be circulated to the Civil Judge?
- No

SABUBEN D/O DHULABHAI ABHABHAI

Versus

COMPETENT AUTHORITY & ADDL. COLLECTOR

Appearance:

MR MI HAVA for Petitioner

MR TH SOMPURA, AGP, for Respondents Nos. 1 & 2

Respondent no.3 deleted

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 05/12/96

ORAL JUDGEMENT

Heard learned Advocates for the parties. Rule returnable today. Learned Assistant Government Pleader Mr.T.H.Sompura waives service of Rule on behalf of respondents nos.1 and 2. Petitioner is permitted to delete respondent no.3.

The petitioner claims to be the heir of one

Dhulabhai Abhabhai, who expired in the year 1954, leaving behind him his widow Chanchalben and his daughter Sabuben (the present petitioner), as heirs. Said Chanchalben inherited a piece of agricultural land bearing Survey No.210 admeasuring 4957 sq.mtrs. The said piece of land was re-constituted as Final Plot No.57 and reduced to 3718 sq.mtrs. Chanchalben declared the said plot of land as her holding and claimed for retention of a unit of land for herself as well as for her adopted son, Harmanbhai and for her daughter, Sabuben. The competent authority, however, did not recognise son, Harmanbhai and daughter, Sabuben as the holders of the land and held that Chanchalben alone inherited the said piece of land and she alone was the holder of the land on the date of the commencement of the Urban Land (Ceiling and Regulations) Act, 1976 (hereinafter referred to as 'the Act'). In the circumstances, only one unit of land was permitted to be retained by Chanchalben and the rest of land was declared to be excess land in the hands of Chanchalben. Feeling aggrieved, an appeal was preferred before the Urban Land Tribunal, which too, was rejected.

The present petitioner thereafter filled-in Form No.1 under Section 6 of the Act, and declared the above referred land to be of her holding along with Chanchalben as heirs of deceased Dhulabhai. Her claim of having inherited right to the land was not believed by the competent authority and was rejected accordingly. The petitioner, therefore, preferred an appeal to the urban Land Tribunal being Appeal No.3 of 1991, which too, on 30th October, 1993, was rejected. The petitioner, feeling aggrieved, has preferred this petition and has challenged the above referred order dated 30th October 1993.

Learned Advocate Mr. Hava has appeared for the petitioner and has submitted that, though it is a mandatory requirement under Section 33 of the Act, the petitioner was not heard by the Tribunal. He further submitted that, late Dhulabhai having expired in the year 1954, his estate was governed by the Hindu Nibandh, as was prevalent in the area at the relevant time and under the said enactment, the petitioner, being the daughter of late Dhulabhai, inherited his estate along with her widowed mother. Be it noted that, this contention was not raised by the petitioner before the competent authority. However, since the petitioner was entitled to an opportunity of hearing by the Tribunal, the order made by the Tribunal, without hearing the petitioner, requires to be quashed and set aside.

Learned Assistant Government Pleader, Mr. Sompura also has not been able to dispute the petitioner's contention that, she was not afforded an opportunity of hearing before the Tribunal. He has, however, contended that, earlier on two occasions, Chanchalben had claimed a unit of land for her daughter, Sabuben, however, the same was rejected on merits and the present claim made by Sabuben herself was not maintainable.

Since the petitioner has not been afforded an opportunity of hearing, I quash and set aside the order made by the Tribunal on 30th October, 1993. The Appeal No.3 of 1991 preferred by the petitioner is remanded to the Tribunal. I do not express any opinion either on merits of the petitioner's claim or whether the application made by the petitioner is maintainable or not. The Tribunal shall decide the petitioner's appeal on merits, after affording an opportunity of hearing to the petitioner as is required under Section 33 of the Act.

The petition is allowed to the aforesaid extent. Rule is made absolute accordingly. There shall be no order as to costs.
